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PATENT APPLICATION

ATTORNEY DOCKET NO. 10010240-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Robert D. Bushy

Confirmation No.: 1432

Application No.: 09/877,522

Examiner: Harrell, Robert

Filing Date: 6-8-01

Group Art Unit: 2142

Title: System and Method for Appliance Adaptation and Evolution

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Commissioner For Patents
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Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 8-8-05.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐

1st Month
\$120

☐

2nd Month
\$450

☐

3rd Month
\$1020

☐

4th Month
\$1590

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 500. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Robert D. Bushy)	
)	Group Art Unit: 2142
Serial No.: 09/877,522)	
)	Examiner: Harrell, Robert
Filed: June 8, 2001)	
)	Atty. Docket No.: 10010240-1
For: System and Method for Appliance)	
Adaptation and Evolution)	

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Appeal Brief under 37 C.F.R. § 41.37 is submitted in support of the Notice of Appeal filed August 8, 2005, responding to the Final Office Action mailed May 9, 2005.

It is not believed that extensions of time or fees are required to consider this Appeal Brief. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to Deposit Account No. 08-2025.

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I. Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. Related Appeals and Interferences

There are no known related appeals or interferences that will affect or be affected by a decision in this Appeal.

III. Status of Claims

Claims 1-20 stand finally rejected. No claims have been allowed. The final rejections of claims 1-20 are appealed.

IV. Status of Amendments

This application was originally filed on June 8, 2001, with twenty (20) claims. In a Response filed December 8, 2004, Applicant amended claims 1-10 and 14-20.

The above-identified amendments have been entered and no other amendments have been made to any of claims 1-20. The claims in the attached Claims Appendix (see below) reflect the present state of those claims.

V. Summary of Claimed Subject Matter

The claimed inventions are summarized below with reference numerals and references to the written description (“specification”) and drawings. The subject matter described in the following appears in the original disclosure at least where indicated, and may further appear in other places within the original disclosure.

Independent claim 1 describes an image capture appliance (102, Figure 1) configured for connection to a network (110, Figure 1) and communication with a device (116 and 118, Figure 1) connected to the network. The appliance comprises a processing device (200, Figure 2) configured to control operation of the image capture appliance. Applicant’s specification, page 5, lines 5-8; page 6, lines 15-22; page 7, lines 7-17.

The appliance of claim 1 further comprises memory (202, Figure 2) including logic (216, Figure 2) configured to receive software via the network that facilitates communication between the image capture appliance and the device from a software source. Applicant’s specification, page 7, lines 8-11; page 8, lines 18-20; page 13, line 22 to page 14, line 2; page 15, lines 7-10; page 17-19; Figure 4, item 408; Figure 5, item 510; Figure 6, item 614.

The appliance of claim 1 further comprises a network interface device (208, Figure 2) with which the image capture appliance communicates with the software source. Applicant’s specification, page 8, lines 2-5.

Independent claim 9 describes an appliance (102, 116, 118, Figure 1) configured for direct connection to a network (110, Figure 1) and communication with a device (102, 116, 118, Figure 1) connected to the network. The appliance comprises a processing

device (200, Figure 2) configured to control operation of the appliance. Applicant's specification, page 5, lines 5-8; page 6, lines 15-22; page 7, lines 7-17.

The appliance of claim 9 further comprises an acquisition module (216, Figure 2) adapted to receive software that facilitates communication between the appliance and the device from a software source. Applicant's specification, page 8, lines 18-20; page 13, line 22 to page 14, line 2; page 15, lines 7-10; page 17-19; Figure 4, item 408; Figure 5, item 510; Figure 6, item 614.

The appliance of claim 9 further comprises a network interface device (208, Figure 2) with which the appliance communicates with the software source. Applicant's specification, page 8, lines 2-5.

As is further provided in claim 9, the appliance is one of an image capture appliance (102, Figure 1), a personal digital assistant (116, Figure 1), and a mobile telephone (118, Figure 1). Applicant's specification, page 6, lines 3-6 and 19-22.

Independent claim 15 describes a network storage device (108, Figure 1). The storage device comprises a processing device (300, Figure 3) configured to control operation of the device. Applicant's specification, page 8, line 22 to page 9, line 2; page 9, lines 7-12.

The storage device of claim 15 further comprises memory (302, Figure 3) including logic (310, Figure 3) configured to receive software that facilitates communication between a digital camera and a separate network device, and including logic configured to transmit software to the network appliance. Applicant's specification, page 8, line 22 to page 9, line 2; page 9, lines 12-16; page 10, lines 1-3; page 17, lines 20-23; Figure 7, item 712.

The system of claim 15 further comprises a network interface device (304, Figure 3) with which the network storage device communicates with the network appliance. Applicant's specification, page 8, line 22 to page 9, line 2.

Independent claim 16 describes a method for enabling communications between an appliance and a separate device, wherein the appliance is one of an image capture appliance, a personal digital assistant, and a mobile telephone. The method comprises automatically receiving software with the appliance that facilitates communication between the appliance and the separate device. Applicant's specification, page 13, line 22 to page 14, line 2; page 15, lines 7-10; page 17-19; Figure 4, item 408; Figure 5, item 510; Figure 6, item 614.

The system of claim 16 further comprises storing the software in memory of the appliance such that the appliance is adapted to communicate with the separate device. Applicant's specification, page 13, line 22 to page 14, line 2; page 15, lines 7-10; page 17-19; Figure 4, item 408; Figure 5, item 510; Figure 6, item 614.

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are to be reviewed on appeal:

1. Claims 1-20 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson, et al. ("Anderson '749," U.S. Pat. No. 6,680,749) or, in the alternative, as being anticipated by Anderson ("Anderson '538," U.S. Pat. No. 6,222,538).

2. Claims 1-20 have also been rejected under 35 U.S.C. § 103(a) as being unpatentable in view of the following combinations of references:

(i) Anderson '749 in view of Anderson, et al. ("Anderson '122," U.S. Pat. No. 6,567,122),

(ii) Anderson '749 in view of Anderson, et al. ("Anderson '259", U.S. Pat. No. 6,636,259),

(iii) Anderson '538 in view of Anderson '122, and

(iv) Anderson '538 in view of Anderson '259.

VII. Arguments

The Appellant respectfully submits that Applicant's claims are neither anticipated under 35 U.S.C. § 102 nor obvious under 35 U.S.C. § 103, and respectfully requests that the Board of Patent Appeals overturn the final rejections of those claims at least for the reasons discussed below.

I. Claim Rejections - 35 U.S.C. § 102(e)

Claims 1-20 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson, et al. ("Anderson '749," U.S. Pat. No. 6,680,749) or, in the alternative, as being anticipated by Anderson ("Anderson '538," U.S. Pat. No. 6,222,538). Applicant respectfully traverses this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore,

every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the claimed invention is taught or suggested in either cited reference. Applicant first discusses Anderson '749 in relation to Applicant's claims, and then discusses Anderson '538 in relation to Applicant's claims.

A. Rejection Under Anderson '749

Anderson '749 discloses a method and system for integrating an application user interface with a digital camera user interface. Anderson '749, Patent Title. In discussing the disadvantages of the prior art and identifying needs in the art, Anderson states:

Another disadvantage of conventional cameras is that the operation of user interface is non-intuitive, especially for the novice user. . . .

A further disadvantage of conventional digital-camera user-interfaces is that the camera is capable of displaying only the images themselves, or a combination of an image and its image number. . . .

The assignee of the present application has developed a software-based digital camera architecture in which the basic functionality of the camera is controlled by an operating system. . . .

Although such application programs exists in the PC environment, the use of such programs in digital cameras is precluded due to their nature and design. . . .

Accordingly, what is needed is an improved user interface for a multi-mode digital camera. What is also needed is an improved interface for application programs running on the camera that is sufficiently intuitive and simple to allow operation by the general public. The present invention addresses these needs.

[Anderson '749, column 2, line 3 to column 3, line 4]

In view of the above identified needs, Anderson discloses “an improvement in user interfaces of digital imaging devices” (Anderson ‘749, column 4, lines 43-44), and nearly the entirety of the Anderson ‘749 disclosure is dedicated to describing various aspects of Anderson’s digital camera user interfaces (see Anderson ‘749, column 4, line 60 to column 13, line 67). Because of that disclosure, it is difficult to understand the purported applicability of Anderson ‘749 to Applicant’s claims.

As is identified by the Examiner, Anderson does mention loading a program to a digital camera for the purpose of modifying the camera user interface. In particular, in column 12, Anderson states the following:

In a second embodiment of the present invention, an application program 760 may be loaded into the digital camera either from removable memory 354 (FIG. 3), or downloaded from a host computer or from a network to run in place of the control application 760.

[Anderson ‘749, column 12, lines 14-19]

Significantly, Anderson does not appear to say anything else about receiving software with a digital camera from a network. For example, Anderson does not teach providing software to a digital camera, or any other appliance for that matter, wherein the software *facilitates communication between the appliance and another device*.

1. Claims 1-8

Independent claim 1 provides as follows (emphasis added):

1. An image capture appliance configured for connection to a network and communication with a device connected to the network, the appliance comprising:

a processing device configured to control operation of the image capture appliance;

memory including *logic configured to receive software* via the network *that facilitates communication between the image capture appliance and the device from a software source*; and

a network interface device with which the image capture appliance communicates with the software source.

Regarding claim 1, Applicant notes that Anderson ‘749 does not teach an image capture appliance that includes “logic configured to receive software . . . that facilitates communication between the image capture appliance and [a] device”. Contrary to that argued by the Examiner, column 12, lines 14-19 of Anderson ‘749, which is reproduced above, does not provide such a teaching. Instead, that portion of Anderson ‘749 teaches, and only teaches, downloading an “application program 760” from a network. *Nowhere* does Anderson state that the “application program 760” facilitates communication between Anderson’s digital camera and another device. Again, 35 U.S.C. § 102 requires that an applied reference teach *each and every* limitation of the claim that is being rejected. Clearly, Anderson ‘749 fails to do so. Accordingly, the rejection is improper and should be withdrawn as to claims 1-8.

Applicant further notes that the Examiner has yet to identify a portion of Anderson ‘749 that actually teaches that the “application program 760” facilitates communication with another device. Instead, in the Advisory Action, the Examiner merely states, for the first time, “the application must contain communication software else such abilities would be lost

when overriding the original control program which contained communication software.”

This argument is problematic for several reasons. First, nothing in the Anderson ‘760 disclosure states that Anderson’s digital camera comprises such communication software before the new user interface is downloaded to the camera. Applicant asserts that it is not proper to simply presume that Anderson’s digital camera comprises such software. Indeed, as is noted in Applicant’s Background section:

Presently, peripheral devices are used in conjunction with computing devices such as personal computers (PCs) in host-slave arrangements. In that the language spoken by the PC internally is normally different from that spoken by the peripheral device, the PC typically must include some means for translating communications from the peripheral device so that the PC and peripheral device can communicate with each other.

[Applicant’s specification, page 1, lines 10-15]

Accordingly, the typical case is that any software that facilitates communication is provided on the PC, *not* the peripheral device (e.g., camera). Although Applicant states that such software is provided on some peripheral devices (see Applicant’s specification, page 2, lines 13-15), this is not a given for all peripheral devices. Therefore, the presumption that Anderson’s digital camera comprises such software is flawed.

Furthermore, even assuming that Anderson’s digital camera originally comprised such software, nothing in Anderson’s disclosure states that the user interface software that is downloaded to the digital camera would replace any such communication software. In fact, the user interface software presumably would *not* replace any communication software because the user interface software pertains to the user interface, i.e., what the user interacts with, not what another device would interact with.

For at least the foregoing reasons, it is clear that Anderson does not anticipate independent claim 1, or dependent claims 2-8.

Applicant's dependent claims also contain their own limitations that are not anticipated by Anderson '749. For example, in regard to claim 5, Anderson '749 does not teach an appliance that is adapted to "periodically search for software for the appliance". Applicant notes that the Examiner has not identified any particular portion of the Anderson '749 disclosure that teaches such a feature.

2. Claims 9-14

Independent claim 9 provides as follows (emphasis added):

9. An appliance configured for direct connection to a network and communication with a device connected to the network, the appliance comprising:

a processing device configured to control operation of the appliance;

an acquisition module adapted to receive software that facilitates communication between the appliance and the device from a software source; and

a network interface device with which the appliance communicates with the software source

wherein the appliance is one of an image capture appliance, a personal digital assistant, and a mobile telephone.

Regarding claim 9, Anderson '749 does not teach an appliance comprising an acquisition module that is adapted to "receive software that facilitates communication

between the appliance and [a] device” at least for reasons described above in relation to claim 1. Accordingly, the rejection is improper and should be withdrawn as to claims 9-14.

Applicant’s dependent claims also contain their own limitations that are not anticipated by Anderson ‘749. For example, in regard to claim 12, Anderson ‘749 does not teach an appliance that is adapted to “periodically search for software for the appliance”. Applicant refers back to the discussion of claim 5 above.

3. Claim 15

Independent claim 15 provides as follows (emphasis added):

15. A network storage device, comprising:
a processing device configured to control operation of the device;
memory including *logic configured to receive software that facilitates communication between a digital camera and a separate network device*, and including *logic configured to transmit software to the network appliance*; and
a network interface device with which the network storage device communicates with the network appliance.

Regarding claim 15, Anderson ‘749 does not teach “logic configured to receive software that facilitates communication between a digital camera and a separate network device” or “logic configured to transmit” that software to the network appliance. As is discussed above, Anderson’s digital camera is not described as receiving software that facilitates communication between a digital camera and another device, and Anderson identifies no other device that transmits that software to Anderson’s digital camera. Accordingly, the rejection is improper and should be withdrawn as to claim 15.

4. Claims 16-20

Independent claim 16 provides as follows (emphasis added):

16. A method for enabling communications between an appliance and a separate device, wherein the appliance is one of an image capture appliance, a personal digital assistant, and a mobile telephone, the method comprising:

automatically receiving software with the appliance that facilitates communication between the appliance and the separate device; and

storing the software in memory of the appliance such that the appliance is adapted to communicate with the separate device.

Regarding claim 16, Anderson '749 does not teach “automatically receiving software with the appliance that facilitates communication between the appliance and the separate device” or “storing the software in memory of the appliance such that the appliance is adapted to communicate with the separate device” for reasons described above. Accordingly, the rejection is improper and should be withdrawn as to claims 16-20.

Applicant's dependent claims also contain their own limitations that are not anticipated by Anderson '749. For example, in regard to claim 18, Anderson '749 does not teach an appliance that is adapted for “automatically searching for software over a network to which the appliance is connected”. Furthermore, in regard to claim 19, that searching is not “conducted on a periodic basis”. Moreover, regarding claim 20, Anderson '749 does not teach that searching for software used to facilitate communication with a separate device is conducted “in response to a communication from the separate device”. Applicant notes that

the Examiner has failed to identify any portion of Anderson '749 in which features are actually disclosed.

5. Conclusion

Due to the shortcomings of Anderson '749 described in the foregoing, Applicant respectfully asserts that Anderson '749 does not anticipate Applicant's claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

B. Rejection Under Anderson '538

Anderson '538 discloses directing image capture sequences in a digital imaging device using scripts. Anderson '538, Patent Title. As in Anderson '749, the focus of the disclosure in Anderson '538 is on a user interface of a digital camera. As is described by Anderson:

Although conventional digital cameras are more convenient for the user to use than film cameras due to instant play back of captured images, there are several drawbacks in the user interface that restrict user interaction with the camera. . . .

Accordingly, what is needed is an improved system and method for displaying status information in a manner that does not obscure the display of the current object in the LCD, and for controlling user interaction in a digital imaging device. The present invention addresses such a need.

[Anderson '538, column 1, line 48 to column 2, line 29]

In view of the above-described need, Anderson '538 discloses controlling user interaction in a digital imaging device using "dynamic overlay bars." Anderson '538,

column 3, lines 51-53. Anderson describes these overlay bars and their use in detail throughout the disclosure. See Anderson '538, column 4, line 1 to column 15, line 16. Therefore, like Anderson '749, Anderson '538 describes systems and methods for providing a user interface on a digital camera. Significantly, *nowhere* is it stated in Anderson '538 that the digital camera receives software that facilitates communication between the appliance and another device.

1. Claims 1-8

Regarding independent claim 1, Anderson '538 does not teach an image capture appliance that includes “logic configured to receive software . . . that facilitates communication between the image capture appliance and [a] device”. That Anderson '538 teaches “installing selected application programs for running on the digital camera” as is noted in the Office Action does *not* mean that Anderson '538 teaches logic configured to receive software that facilitates communication between the image capture appliance and another device. Again, there is no reason to legitimately assume that installation of a “selected application program” comprises installation of a program that facilitates communication between an appliance and another device. Accordingly, the rejection is improper and should be withdrawn as to claims 1-8.

With specific regard to dependent claim 5, Anderson '538 does not teach an appliance that is adapted to “periodically search for software for the appliance”. Regarding Figure 11 of Anderson '538, which was identified by the Examiner in the final Office Action, Anderson only teaches searching for “system files on the removable memory 354” of the digital camera, *not* periodically searching for software for the appliance.

2. Claims 9-14

Regarding independent claim 9, Anderson '538 does not teach an appliance comprising an acquisition module that is adapted to “receive software that facilitates communication between the appliance and [a] device” for reasons described above in relation to claim 1. Accordingly, the rejection is improper and should be withdrawn as to claims 9-14.

With specific regard to dependent claim 12, Anderson '538 does not teach an appliance that is adapted to “periodically search for software for the appliance”. Applicant refers back to the discussion of claim 5 above.

3. Claim 15

Regarding independent claim 15, Anderson '538 does not teach “logic configured to receive software that facilitates communication between a digital camera and a separate network device” or “logic configured to transmit software to the network appliance”. As is mentioned above, Anderson’s digital camera is not described as receiving software that facilitates communication between a digital camera and another device, and Anderson identifies no other device that transmits that software to Anderson’s digital camera. Accordingly, the rejection is improper and should be withdrawn as to claim 15.

4. Claims 16-20

Regarding independent claim 16, Anderson '538 does not teach “automatically receiving software with the appliance that facilitates communication between the

appliance and the separate device” or “storing the software in memory of the appliance such that the appliance is adapted to communicate with the separate device” for reasons described above. Accordingly, the rejection is improper and should be withdrawn as to claims 16-20.

With specific regard to dependent claim 18, Anderson ‘538 does not teach an appliance that is adapted for “automatically searching for software over a network to which the appliance is connected”. Applicant refers back to the discussion of claim 5 above. Furthermore, in regard to dependent claim 19, that searching is not “conducted on a periodic basis”. Moreover, regarding dependent claim 20, Anderson ‘538 does not teach that searching for software used to facilitate communication with a separate device is conducted “in response to a communication from the separate device”. Applicant notes that the Examiner has yet to identify explicit teachings in Anderson ‘538 that disclose such aspects.

5. Conclusion

Due to the shortcomings of Anderson ‘538 described in the foregoing, Applicant respectfully asserts that Anderson ‘538 does not anticipate Applicant’s claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

II. Claim Rejections - 35 U.S.C. § 103(a)

Claims 1-20 have also been rejected under 35 U.S.C. § 103(a) as being unpatentable in view of the following combinations of references:

(i) Anderson ‘749 in view of Anderson, et al. (“Anderson ‘122,” U.S. Pat. No. 6,567,122),

(ii) Anderson '749 in view of Anderson, et al. ("Anderson '259", U.S. Pat. No. 6,636,259),

(iii) Anderson '538 in view of Anderson '122, and

(iv) Anderson '538 in view of Anderson '259.

Applicant respectfully traverses these rejections.

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, the prior art at least does not teach or suggest all of the claim limitations.

As an initial matter, Applicant notes that the Examiner's reliance on Anderson '122 and Anderson '259 in rejecting claims 1-20 raises serious questions about the legitimacy of the rejections under 35 U.S.C. § 102. Specifically, if Anderson '749 and Anderson '538 indeed teach an appliance that receives software that facilitates communication between the appliance and another device, why are Anderson '122 and Anderson '259 required to reject Applicant's claims? The answer is simple: Anderson '749 and Anderson '538 fail to teach such an aspect.

As is identified above in reference to the rejections under 35 U.S.C. § 102, neither Anderson '749 nor Anderson '538 teach or suggest an appliance that receives software that facilitates communication between the appliance and another device. Therefore, unless one or both of Anderson '122 and Anderson '259 provide that missing teaching or an appropriate suggestion, the rejections are improper as not teaching or suggesting all of Applicant's claim limitations as per MPEP § 2143.

Regarding the rejections under 35 U.S.C. § 103, Applicant notes that the Office Action does *not* state that either Anderson '122 or Anderson '259 provides a teaching, or a legitimate suggestion, of receiving with or providing to an appliance software that facilitates communication between the appliance and another device. Therefore, because neither Anderson '749 nor Anderson '538 teach such an aspect, the Office Action fails to state a *prima facie* case of obviousness. Applicant's claims are allowable over the proposed combinations for at least this reason.

Applicant further explicitly asserts that neither Anderson '122 nor Anderson '259 provides a teaching or suggestion of receiving with or providing to an appliance software that facilitates communication between the appliance and another device. Regarding

Anderson '122, disclosed is a method and system for implementing internet access to images stored in a digital image capture unit including an imaging device and a display. See Anderson '122, Abstract. *Nowhere* is it stated in Anderson '122, however, that the hand-held electronic device, for example, comprises logic configured to receive software that facilitates communication between the device and another device.

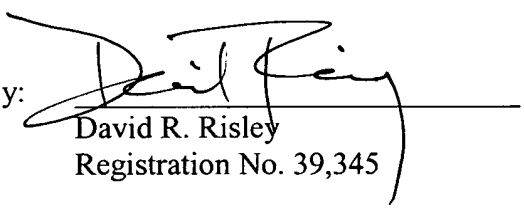
Turning to Anderson '259, disclosed is a method and system for automatically establishing a user account and for configuring a hand-held electronic device for accessing a site on a public network using the user account. See Anderson '259, Abstract. *Nowhere* is it stated in Anderson '259, however, that the hand-held electronic device, for example, comprises logic configured to receive software that facilitates communication between the device and another device.

VII. Conclusion

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,

By:


David R. Risley
Registration No. 39,345

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10-6-05
Mary M. Lee



Claims Appendix under 37 C.F.R. § 41.37(c)(1)(viii)

The following are the claims that are involved in this Appeal.

1. An image capture appliance configured for connection to a network and communication with a device connected to the network, the appliance comprising:

a processing device configured to control operation of the image capture appliance;

memory including logic configured to receive software via the network that facilitates communication between the image capture appliance and the device from a software source; and

a network interface device with which the image capture appliance communicates with the software source.

2. The image capture appliance of claim 1, wherein the logic configured to receive software is adapted to transmit approval to the software source in response to a notification from the software source of the availability of the software.

3. The image capture appliance of claim 1, wherein the logic configured to receive software is adapted to transmit approval only upon authorization received by a user of the appliance.

4. The image capture appliance of claim 1, further comprising logic configured to actively retrieve software from the software source.

5. The image capture appliance of claim 4, wherein the logic configured to actively retrieve software is adapted to periodically search for software for the appliance.

6. The image capture appliance of claim 4, wherein the logic configured to actively retrieve software is adapted to search for software for the appliance in response to a communication from the software source.

7. The image capture appliance of claim 1, wherein the logic configured to receive software is adapted to receive executables and data structures for accessing the device.

8. The image capture appliance of claim 1, wherein the appliance is a digital camera.

9. An appliance configured for direct connection to a network and communication with a device connected to the network, the appliance comprising:

a processing device configured to control operation of the appliance;

an acquisition module adapted to receive software that facilitates communication between the appliance and the device from a software source; and

a network interface device with which the appliance communicates with the software source

wherein the appliance is one of an image capture appliance, a personal digital assistant, and a mobile telephone.

10. The appliance of claim 9, wherein the acquisition module is adapted to transmit approval to the software source in response to a notification from the software source of the availability of the software.

11. The appliance of claim 9, further comprising means for actively retrieving software from the software source.

12. The appliance of claim 11, wherein the means for actively retrieving software are adapted to periodically search for software for the appliance.

13. The appliance of claim 11, wherein the means for actively retrieving software are adapted to search for software for the appliance in response to a communication from the software source.

14. The appliance of claim 9, wherein the appliance is a digital camera.

15. A network storage device, comprising:

a processing device configured to control operation of the device;

memory including logic configured to receive software that facilitates communication between a digital camera and a separate network device, and including logic configured to transmit software to the network appliance; and

a network interface device with which the network storage device communicates with the network appliance.

16. A method for enabling communications between an appliance and a separate device, wherein the appliance is one of an image capture appliance, a personal digital assistant, and a mobile telephone, the method comprising:

automatically receiving software with the appliance that facilitates communication between the appliance and the separate device; and

storing the software in memory of the appliance such that the appliance is adapted to communicate with the separate device.

17. The method of claim 16, further comprising receiving a notification from a source of software with the appliance regarding the availability of the software prior to receiving the software.

18. The method of claim 16, further comprising automatically searching for software over a network to which the appliance is connected.

19. The method of claim 18, wherein automatically searching is conducted on a periodic basis.

20. The method of claim 18, wherein automatically searching is conducted in response to a communication from the separate device.

Evidence Appendix under 37 C.F.R. § 41.37(c)(1)(ix)

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

Related Proceedings Appendix under 37 C.F.R. § 41.37(c)(1)(x)

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.